

HOUSE BILL NO. 189

INTRODUCED BY G. MATTHEWS

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING ON THE STATE COMPENSATION INSURANCE FUND A PHASED-IN NET PREMIUM TAX; ESTABLISHING A TAX RATE OF 1 PERCENT FOR FISCAL YEAR 2006, 2 PERCENT FOR FISCAL YEAR 2007, AND THE IDENTICAL RATE PAID BY OTHER INSURERS FOR 2008 AND SUBSEQUENT FISCAL YEARS; CLARIFYING PROVISIONS OF THE MONTANA INSURANCE CODE THAT APPLY TO THE STATE FUND; IMPOSING REPORTING REQUIREMENTS; AMENDING SECTIONS 33-1-102 AND 33-2-705, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

- (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
- (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
- (c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

1 (5) ~~This~~ Except as provided in 33-2-705, 33-16-1011, and 33-16-1024, this code does not apply to
2 workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related
3 sections.

4 (6) The department of public health and human services may limit the amount, scope, and duration of
5 services for programs established under Title 53 that are provided under contract by entities subject to this title.
6 The department of public health and human services may establish more restrictive eligibility requirements and
7 fewer services than may be required by this title.

8 (7) This code does not apply to the state employee group insurance program established in Title 2,
9 chapter 18, part 8.

10 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
11 for in 2-9-202.

12 (9) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political
13 subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one
14 another by way of a pooling, joint retention, deductible, or self-insurance plan.

15 (b) This code does not apply to any arrangement, plan, or interlocal agreement between political
16 subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in
17 which the political subdivision provides to its officers, elected officials, or employees disability insurance or life
18 insurance through a self-funded program.

19 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
20 of, proposal to make, and administration of a service contract.

21 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
22 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
23 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
24 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
25 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
26 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
27 power surges or accidental damage from handling. A service contract does not include motor club service as
28 defined in 61-12-301.

29 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
30 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable

1 for the financial risk under the contract with the third party as provided in 7-34-103.

2 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
3 town, the entity is subject to the provisions of this code."

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5 **Section 2.** Section 33-2-705, MCA, is amended to read:

6 **"33-2-705. Report on premiums and other consideration -- tax -- application to state**
7 **compensation insurance fund.** (1) Each authorized insurer and each formerly authorized insurer with respect
8 to premiums received while an authorized insurer in this state shall file with the commissioner, on or before
9 March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income,
10 including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings,
11 savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or
12 renewed insurance, charges for payment of premium in installments, and all other consideration for insurance
13 from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life
14 insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies
15 covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate
16 allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering
17 property, subjects, or risks located or resident in more than one state, after deducting from the total direct
18 premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium,
19 the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums
20 direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns
21 paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total
22 charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations
23 received on annuity contracts may not be included in total direct premium income and are not subject to tax.

24 (2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the
25 commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

26 (3) That portion of the tax paid under this section by an insurer on account of premiums received for
27 fire insurance must be separately specified in the report as required by the commissioner, for apportionment as
28 provided by law. When insurance against fire is included with insurance of property against other perils at an
29 undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion
30 of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued.

(8) On or before December 15 of each fiscal year, the state compensation insurance fund shall:

(a) file with the commissioner a report showing total direct premium income written for the prior fiscal year;

(b) pay a premium tax upon the net premiums calculated pursuant to subsection (1) and computed at the following rates:

(i) 1% for fiscal year 2006;

(ii) 2% for fiscal year 2007; and

(iii) the rate provided in subsection (2) for fiscal year 2008 and subsequent fiscal years; and

(c) file with the commissioner a copy of its current fiscal year annual financial statement.

(9) Except as provided in subsection (8), the provisions of this section do not apply to the state compensation insurance fund."

NEW SECTION. Section 3. Effective date -- applicability. [This act] is effective July 1, 2005, and applies to premiums collected on or after July 1, 2005.

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